IN THE COURT OF THE CIVIL JUDGE AND ADDITIONAL J.M.F.C., AT TARIKERE

Present : SMT.PAVITHRA.M.D, B.A., LL.B.,
Civil Judge & Addl. JMFC. Tarikere.

O.S.No.162/2008
Dated this 22nd day of October 2018

ORDERS ON PAYMENT OF DEFICIT STAMP DUTY AND PENALTY.

The plaintiff has filed this suit for specific performance of contract. The sale agreement dated 01.10.2008 produced by the plaintiff is marked at Ex.P4. The said sale agreement has stamp duty of ₹100/-. The recitals of the said sale agreement reveals that, the possession of the property is delivered. Hence, it is required to collect the stamp duty on the above said agreement of sale dated 01.10.2008 as if a conveyance as per Article 5(e)(i) of the Karnataka Stamp Act 1957. The counsel for the plaintiff has argued that, the said document is already marked as Ex.P4 without any objection and hence, the subsequent objection raised with regard to insufficient stamp duty and penalty under the said agreement of sale is not sustainable.

At this juncture it is worthful to refer the decision reported in ***ILR 2015 Kar 1984 between Smt.Savithramma.R.C V/s M/s. Vijayua Bank and Another,*** wherein our ***Hon'ble High Court of Karnataka*** has held that:-

> ***KARNATAKA STAMP ACT 1957-SECTION 34-Application filed under-order passed by the Trial Court declining to impound and levy duty and penalty on three documents which are alleged to have insufficiently stamped-Finding of the Trial Court that once the insufficiently stamped documents are marked without objection, then the defendants cannot have any grievance-Pleaded against-Held, Once the document is marked without objection, no subsequent objection regarding its marking can be gone into and such document will have to be looked into while deciding the case on merits. This, however, does come in the way of Trial Court discharging the statutory duty contemplated under Section 33 of the Act.***

Further Held:

> ***(a) A duty is cast upon every Judge to examine every document that is sought to be marked in evidence. The nomenclature of the document is not decisive. The question of admissibility will have to be decided by reading the document and deciding its nature and classification. The tendency to mark documents without inspection and verification should be eschewed. Even while recording ex parte evidence or while recording evidence in the absence of the Counsel for the other side, the Court should be vigilant and examine and ascertain the nature of the document proposed to be marked and ensure that it is a document which is admissible. The Court should not depend on objections of the other Counsel before considering whether the document is admissible in evidence or not. Section 33 of the Stamp Act casts a duty on the Court to examine the document to find out whether it is duly stamped or not, irrespective of the fact whether an objection to its marking is raised or not. Section 37 of the Act provides what the Judge has to do when he has collected duty and penalty under Section 34 of the***

Act and what he has to do, if the case does not fall under Section 34 of the Act.

Our Honb'le High Court of Karantaka in the above said decision further observed that, if the document is insufficiently stamped and admitted in evidence, though objection regarding admissibility cannot be raised subsequently, that doesn't take away the obligation of the Judge to impound the document U/Sec.33 of the Act. Hence, in view of the observation made by our Hon'ble High Court of Karnataka in the above said decision I find no impediment to collect insufficient stamp duty and penalty on the agreement of sale dated 01.10.2008 in the present case.

The counsel for the plaintiff further submitted that, as ventilated in the evidence accrued on record the possession of the property has not been handed over in favour of the plaintiff and hence, there is no need to collect insufficient stamp and penalty as it the possession is delivered under the sale agreement. It is well established law that, while collecting stamp duty and penalty on the agreement of sale it is necessary to look into whether the possession of the property is delivered under the sale agreement or not. Further, the subsequent change of circumstances cannot be considered while collecting stamp duty and penalty.

Hence, the argument canvassed by the counsel for the plaintiff holds no water.

As adverted supra, it is necessary to collect stamp duty and penalty on the agreement of sale dated 01.10.2008 as if a conveyance. Accordingly, I proceed to pass the following:-

ORDER

The plaintiff is hereby directed to pay deficit stamp duty and penalty of ₹39,820/- on agreement of sale dated 01.10.2008.

Sd/-

(M.D.PAVITHRA)
CIVIL JUDGE AND ADDL.J.M.F.C.,
TARIKERE.